IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.108 OF 2006

Praveen & Ors. ...Petitioners
vs.
Rai Foundation & Ors. ...Respondents

Mr.Mihir Desai for the petitioners
Mr.Kiran Bapat i/b Mr.Akhar Laws for the respondent No.1
Mr.M.D.Naik, A.G.P. for Respondent Nos.2 and 3.

CORAM:H.L.GOKHALE & A.S.OKA,JJ.
DATE : JANUARY 31,2006

P.C.:

. Leave to amend the name of the Respondent No.1.

1. Heard Mr.Desai in support of this Petition, Mr.Naik for Respondent Nos.2 and 3 and Mr.Bapat for Respondent No.1.

2. This Petition is filed by a few students of the first Respondent-Institution situated in Navi Mumbai. This institution was constituted under the Chhatisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam,2002 (for short the Act). The legality of such institutions was challenged in Writ Petitions to the Apex Court and the Apex Court in its Judgment in the case of Prof. Yashpal & Anr. vs. State of Chhatisgarh & Others (2005)5 S.C.C. 420 held that incorporation of such off-campus institutions under that Act was invalid in as much as some of the provisions of that Act were also held to be bad in law. Consequent upon that

Judgment, another application was moved before the Apex Court and in interim application No.18 of 2005 the Apex Court observed that it will be open to the Applicant-student or other students to approach the State Government for appropriate relief. A prayer is made in this Petition for a direction either to affiliate this institution in Navi Mumbai to the University of Mumbai or any other University in Maharashtra. In this connection we must note that the Apex Court declined to grant the very request when it was made to it. It however was observed that it will be open to the students to approach the State Government for appropriate relief. This order was passed on 7th September 2005. It appears that thereafter there has been correspondence between the first Respondent-Institution and the Mumbai University. The first Respondent has written to the Vice Chancellor of the University on 8th September 2005 seeking affiliation with the Mumbai University. A copy of the Application was also sent to the State Government and various other authorities. The correspondence is continued and now this Petition is filed by a few students seeking direction that university be asked to affiliate the institution to the Mumbai University.

3. Mr.Naik for the University has pointed out to us that a committee of 10 academicians has been appointed to visit the institution and to make a report. That committee has been appointed on 17th January 2006. We are told that they are

going to visit the first Respondent tomorrow i.e. 1st February 2006 and they have been asked to make a report within a period of three weeks to the Vice Chancellor. Mr. Naik further states on instructions that the report will be placed before the academic council. The members of the academic counsil are required to be given notice of two weeks along with the report so that there are proper deliberations therein. The meeting is likely to be held on or around 10th march, 2006.

4. It is seen from the Petition that there are diverse courses which were run by the first Respondent-Institution. Though the prayer in the Petition is for seeking direction for affiliation, in our view it will be for the academic council at the University to take its own decision as to whether these courses run by the first Respondent should be affiliated and whether the institution should be given recognition. Mr.Desai makes a submission that some of these students are now in the 2nd or 3rd year. Their examinations have been conducted by the Institution on its own in the past and the question of validity of these examinations will also come up. In our view all these aspects will be gone into by the academic council after the report is made by the Committee. It will be for the academic council to decide whether any particular course ought to be recognized and affiliated. If it is decided not to recognize or affiliate any particular course, then what should

be done to the students is another aspect. It will be for the first Respondent-Institution or the students concerned to take further steps in that behalf after receiving the report. Mr.Naik informs us that the report and the decision of the academic council will have to be forwarded to the State Government and thereafter, the State Government will issue appropriate orders under Section 82 of the Maharashtra Universities Act, 1992.

5. As far as the opportunity of the students to appear for the examinations which are to be held in April-May 2006 is concerned, that will depend upon the decision of the University and the State Government. As pointed out earlier, this takes care of the prayers (a) and (b) of the Petitioners.

6. As far as prayer (c) of the Petition is concerned, it is with respect to the appointment of on Administrator to the first Respondent-Institution or allowing the students to keep terms under the first Respondent-Institution. That is the aspect which may arise after receipt of the report and the decision of the University and the State Government in case affiliation is declined.

7. As far as prayer (d) is concerned, it is with respect to allowing the Petitioners or other students to keep terms under the first Respondent-Institution by depositing fees in this

Court. A direction is sought in prayer (c) to the University of Mumbai that the University should allow the students to keep terms with it in such manner alternatively. Any such direction is not possible at this stage.

8. An occasion to grant lateral admission will arise only after the receipt of report of the University and the State Government. We dispose of the Petition with the aforesaid observation. We expect the University and the State Government to consider the totality of the circumstances and to take a decision which should be in the best interests of the students as well as academic standards. The said decision should be taken by the State Government preferably within a period of two weeks from the date on which it receives the report from the University.

. Petition disposed of.

(H.L.GOKHALE,J.)

(ABHAY S.OKA,J.)